



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB1519

Introduced 2/15/2011, by Rep. Dennis M. Reboletti

#### SYNOPSIS AS INTRODUCED:

30 ILCS 105/5.786 rep.

720 ILCS 5/9-1

725 ILCS 5/119-1 rep.

from Ch. 38, par. 9-1

Amends the State Finance Act, if and only if the provisions of Senate Bill 3539 of the 96th General Assembly become law. Repeals a provision creating the Death Penalty Abolition Fund. Amends the Criminal Code of 1961, if and only if the provisions of Senate Bill 3539 of the 96th General Assembly become law. Limits the number of aggravating factors in which the death penalty may be imposed for first degree murder. Amends the Code of Criminal Procedure of 1963, if and only if the provisions of Senate Bill 3539 of the 96th General Assembly become law. Repeals provision abolishing the death penalty.

LRB097 09193 RLC 49328 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning the death penalty.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 (30 ILCS 105/5.786 rep.)

5 Section 5. If and only if the provisions of Senate Bill  
6 3539 of the 96th General Assembly become law, the State Finance  
7 Act is amended by repealing Section 5.786 as added by Senate  
8 Bill 3539 of the 96th General Assembly.

9 Section 10. If and only if the provisions of Senate Bill  
10 3539 of the 96th General Assembly become law, the Criminal Code  
11 of 1961 is amended by changing Section 9-1 as follows:

12 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

13 Sec. 9-1. First degree Murder - Death penalties -  
14 Exceptions - Separate Hearings - Proof - Findings - Appellate  
15 procedures - Reversals.

16 (a) A person who kills an individual without lawful  
17 justification commits first degree murder if, in performing the  
18 acts which cause the death:

19 (1) he either intends to kill or do great bodily harm  
20 to that individual or another, or knows that such acts will  
21 cause death to that individual or another; or

22 (2) he knows that such acts create a strong probability

1 of death or great bodily harm to that individual or  
2 another; or

3 (3) he is attempting or committing a forcible felony  
4 other than second degree murder.

5 (b) Aggravating Factors. A defendant who at the time of the  
6 commission of the offense has attained the age of 18 or more  
7 and who has been found guilty of first degree murder may be  
8 sentenced to death if:

9 (1) the murdered individual was a peace officer or  
10 fireman killed in the course of performing his official  
11 duties, to prevent the performance of his official duties,  
12 or in retaliation for performing his official duties, and  
13 the defendant knew or should have known that the murdered  
14 individual was a peace officer or fireman; or

15 (2) the murdered individual was an employee of an  
16 institution or facility of the Department of Corrections,  
17 or any similar local correctional agency, killed in the  
18 course of performing his official duties, to prevent the  
19 performance of his official duties, or in retaliation for  
20 performing his official duties, or the murdered individual  
21 was an inmate at such institution or facility and was  
22 killed on the grounds thereof, or the murdered individual  
23 was otherwise present in such institution or facility with  
24 the knowledge and approval of the chief administrative  
25 officer thereof; or

26 (3) the defendant has been convicted of murdering two

1 or more individuals under subsection (a) of this Section or  
2 under any law of the United States or of any state which is  
3 substantially similar to subsection (a) of this Section  
4 regardless of whether the deaths occurred as the result of  
5 the same act or of several related or unrelated acts so  
6 long as the deaths were the result of either an intent to  
7 kill more than one person or of separate acts which the  
8 defendant knew would cause death or create a strong  
9 probability of death or great bodily harm to the murdered  
10 individual or another; or

11 (4) (blank) ~~the murdered individual was killed as a~~  
12 ~~result of the hijacking of an airplane, train, ship, bus or~~  
13 ~~other public conveyance; or~~

14 (5) (blank) ~~the defendant committed the murder~~  
15 ~~pursuant to a contract, agreement or understanding by which~~  
16 ~~he was to receive money or anything of value in return for~~  
17 ~~committing the murder or procured another to commit the~~  
18 ~~murder for money or anything of value; or~~

19 (6) (blank) ~~the murdered individual was killed in the~~  
20 ~~course of another felony if:~~

21 ~~(a) the murdered individual:~~

22 ~~(i) was actually killed by the defendant, or~~

23 ~~(ii) received physical injuries personally~~  
24 ~~inflicted by the defendant substantially~~  
25 ~~contemporaneously with physical injuries caused by~~  
26 ~~one or more persons for whose conduct the defendant~~

1 ~~is legally accountable under Section 5-2 of this~~  
2 ~~Code, and the physical injuries inflicted by~~  
3 ~~either the defendant or the other person or persons~~  
4 ~~for whose conduct he is legally accountable caused~~  
5 ~~the death of the murdered individual; and~~

6 ~~(b) in performing the acts which caused the death~~  
7 ~~of the murdered individual or which resulted in~~  
8 ~~physical injuries personally inflicted by the~~  
9 ~~defendant on the murdered individual under the~~  
10 ~~circumstances of subdivision (ii) of subparagraph (a)~~  
11 ~~of paragraph (6) of subsection (b) of this Section, the~~  
12 ~~defendant acted with the intent to kill the murdered~~  
13 ~~individual or with the knowledge that his acts created~~  
14 ~~a strong probability of death or great bodily harm to~~  
15 ~~the murdered individual or another; and~~

16 ~~(c) the other felony was an inherently violent~~  
17 ~~crime or the attempt to commit an inherently violent~~  
18 ~~crime. In this subparagraph (c), "inherently violent~~  
19 ~~crime" includes, but is not limited to, armed robbery,~~  
20 ~~robbery, predatory criminal sexual assault of a child,~~  
21 ~~aggravated criminal sexual assault, aggravated~~  
22 ~~kidnapping, aggravated vehicular hijacking, aggravated~~  
23 ~~arson, aggravated stalking, residential burglary, and~~  
24 ~~home invasion; or~~

25 (7) (blank) ~~the murdered individual was under 12 years~~  
26 ~~of age and the death resulted from exceptionally brutal or~~

1 ~~heinous behavior indicative of wanton cruelty; or~~

2 (8) the defendant committed the murder with intent to  
3 prevent the murdered individual from testifying or  
4 participating in any criminal investigation or prosecution  
5 or giving material assistance to the State in any  
6 investigation or prosecution, either against the defendant  
7 or another; or the defendant committed the murder because  
8 the murdered individual was a witness in any prosecution or  
9 gave material assistance to the State in any investigation  
10 or prosecution, either against the defendant or another;  
11 for purposes of this paragraph (8), "participating in any  
12 criminal investigation or prosecution" is intended to  
13 include those appearing in the proceedings in any capacity  
14 such as trial judges, prosecutors, defense attorneys,  
15 investigators, witnesses, or jurors; or

16 (9) (blank) ~~the defendant, while committing an offense~~  
17 ~~punishable under Sections 401, 401.1, 401.2, 405, 405.2,~~  
18 ~~407 or 407.1 or subsection (b) of Section 404 of the~~  
19 ~~Illinois Controlled Substances Act, or while engaged in a~~  
20 ~~conspiracy or solicitation to commit such offense,~~  
21 ~~intentionally killed an individual or counseled,~~  
22 ~~commanded, induced, procured or caused the intentional~~  
23 ~~killing of the murdered individual; or~~

24 (10) (blank) ~~the defendant was incarcerated in an~~  
25 ~~institution or facility of the Department of Corrections at~~  
26 ~~the time of the murder, and while committing an offense~~

1 ~~punishable as a felony under Illinois law, or while engaged~~  
2 ~~in a conspiracy or solicitation to commit such offense,~~  
3 ~~intentionally killed an individual or counseled,~~  
4 ~~commanded, induced, procured or caused the intentional~~  
5 ~~killing of the murdered individual; or~~

6 (11) (blank) ~~the murder was committed in a cold,~~  
7 ~~calculated and premeditated manner pursuant to a~~  
8 ~~preconceived plan, scheme or design to take a human life by~~  
9 ~~unlawful means, and the conduct of the defendant created a~~  
10 ~~reasonable expectation that the death of a human being~~  
11 ~~would result therefrom; or~~

12 (12) (blank) ~~the murdered individual was an emergency~~  
13 ~~medical technician — ambulance, emergency medical~~  
14 ~~technician — intermediate, emergency medical technician —~~  
15 ~~paramedic, ambulance driver, or other medical assistance~~  
16 ~~or first aid personnel, employed by a municipality or other~~  
17 ~~governmental unit, killed in the course of performing his~~  
18 ~~official duties, to prevent the performance of his official~~  
19 ~~duties, or in retaliation for performing his official~~  
20 ~~duties, and the defendant knew or should have known that~~  
21 ~~the murdered individual was an emergency medical~~  
22 ~~technician — ambulance, emergency medical technician —~~  
23 ~~intermediate, emergency medical technician — paramedic,~~  
24 ~~ambulance driver, or other medical assistance or first aid~~  
25 ~~personnel; or~~

26 (13) (blank) ~~the defendant was a principal~~

1 ~~administrator, organizer, or leader of a calculated~~  
2 ~~criminal drug conspiracy consisting of a hierarchical~~  
3 ~~position of authority superior to that of all other members~~  
4 ~~of the conspiracy, and the defendant counseled, commanded,~~  
5 ~~induced, procured, or caused the intentional killing of the~~  
6 ~~murdered person; or~~

7 (14) the murder was intentional and involved the  
8 infliction of torture. For the purpose of this Section  
9 torture means the infliction of or subjection to extreme  
10 physical pain, motivated by an intent to increase or  
11 prolong the pain, suffering or agony of the victim; or

12 (15) (blank) ~~the murder was committed as a result of~~  
13 ~~the intentional discharge of a firearm by the defendant~~  
14 ~~from a motor vehicle and the victim was not present within~~  
15 ~~the motor vehicle; or~~

16 (16) (blank) ~~the murdered individual was 60 years of~~  
17 ~~age or older and the death resulted from exceptionally~~  
18 ~~brutal or heinous behavior indicative of wanton cruelty; or~~

19 (17) (blank) ~~the murdered individual was a disabled~~  
20 ~~person and the defendant knew or should have known that the~~  
21 ~~murdered individual was disabled. For purposes of this~~  
22 ~~paragraph (17), "disabled person" means a person who~~  
23 ~~suffers from a permanent physical or mental impairment~~  
24 ~~resulting from disease, an injury, a functional disorder,~~  
25 ~~or a congenital condition that renders the person incapable~~  
26 ~~of adequately providing for his or her own health or~~

1 ~~personal care; or~~

2 (18) ~~(blank) the murder was committed by reason of any~~  
3 ~~person's activity as a community policing volunteer or to~~  
4 ~~prevent any person from engaging in activity as a community~~  
5 ~~policing volunteer; or~~

6 (19) ~~(blank) the murdered individual was subject to an~~  
7 ~~order of protection and the murder was committed by a~~  
8 ~~person against whom the same order of protection was issued~~  
9 ~~under the Illinois Domestic Violence Act of 1986; or~~

10 (20) ~~(blank) the murdered individual was known by the~~  
11 ~~defendant to be a teacher or other person employed in any~~  
12 ~~school and the teacher or other employee is upon the~~  
13 ~~grounds of a school or grounds adjacent to a school, or is~~  
14 ~~in any part of a building used for school purposes; or~~

15 (21) ~~(blank) the murder was committed by the defendant~~  
16 ~~in connection with or as a result of the offense of~~  
17 ~~terrorism as defined in Section 29D 14.9 of this Code.~~

18 (b-5) Aggravating Factor; Natural Life Imprisonment. A  
19 defendant who has been found guilty of first degree murder and  
20 who at the time of the commission of the offense had attained  
21 the age of 18 years or more may be sentenced to natural life  
22 imprisonment if (i) the murdered individual was a physician,  
23 physician assistant, psychologist, nurse, or advanced practice  
24 nurse, (ii) the defendant knew or should have known that the  
25 murdered individual was a physician, physician assistant,  
26 psychologist, nurse, or advanced practice nurse, and (iii) the

1 murdered individual was killed in the course of acting in his  
2 or her capacity as a physician, physician assistant,  
3 psychologist, nurse, or advanced practice nurse, or to prevent  
4 him or her from acting in that capacity, or in retaliation for  
5 his or her acting in that capacity.

6 (c) Consideration of factors in Aggravation and  
7 Mitigation.

8 The court shall consider, or shall instruct the jury to  
9 consider any aggravating and any mitigating factors which are  
10 relevant to the imposition of the death penalty. Aggravating  
11 factors may include but need not be limited to those factors  
12 set forth in subsection (b). Mitigating factors may include but  
13 need not be limited to the following:

14 (1) the defendant has no significant history of prior  
15 criminal activity;

16 (2) the murder was committed while the defendant was  
17 under the influence of extreme mental or emotional  
18 disturbance, although not such as to constitute a defense  
19 to prosecution;

20 (3) the murdered individual was a participant in the  
21 defendant's homicidal conduct or consented to the  
22 homicidal act;

23 (4) the defendant acted under the compulsion of threat  
24 or menace of the imminent infliction of death or great  
25 bodily harm;

26 (5) the defendant was not personally present during

1 commission of the act or acts causing death;

2 (6) the defendant's background includes a history of  
3 extreme emotional or physical abuse;

4 (7) the defendant suffers from a reduced mental  
5 capacity.

6 (d) Separate sentencing hearing.

7 Where requested by the State, the court shall conduct a  
8 separate sentencing proceeding to determine the existence of  
9 factors set forth in subsection (b) and to consider any  
10 aggravating or mitigating factors as indicated in subsection  
11 (c). The proceeding shall be conducted:

12 (1) before the jury that determined the defendant's  
13 guilt; or

14 (2) before a jury impanelled for the purpose of the  
15 proceeding if:

16 A. the defendant was convicted upon a plea of  
17 guilty; or

18 B. the defendant was convicted after a trial before  
19 the court sitting without a jury; or

20 C. the court for good cause shown discharges the  
21 jury that determined the defendant's guilt; or

22 (3) before the court alone if the defendant waives a  
23 jury for the separate proceeding.

24 (e) Evidence and Argument.

25 During the proceeding any information relevant to any of  
26 the factors set forth in subsection (b) may be presented by

1 either the State or the defendant under the rules governing the  
2 admission of evidence at criminal trials. Any information  
3 relevant to any additional aggravating factors or any  
4 mitigating factors indicated in subsection (c) may be presented  
5 by the State or defendant regardless of its admissibility under  
6 the rules governing the admission of evidence at criminal  
7 trials. The State and the defendant shall be given fair  
8 opportunity to rebut any information received at the hearing.

9 (f) Proof.

10 The burden of proof of establishing the existence of any of  
11 the factors set forth in subsection (b) is on the State and  
12 shall not be satisfied unless established beyond a reasonable  
13 doubt.

14 (g) Procedure - Jury.

15 If at the separate sentencing proceeding the jury finds  
16 that none of the factors set forth in subsection (b) exists,  
17 the court shall sentence the defendant to a term of  
18 imprisonment under Chapter V of the Unified Code of  
19 Corrections. If there is a unanimous finding by the jury that  
20 one or more of the factors set forth in subsection (b) exist,  
21 the jury shall consider aggravating and mitigating factors as  
22 instructed by the court and shall determine whether the  
23 sentence of death shall be imposed. If the jury determines  
24 unanimously, after weighing the factors in aggravation and  
25 mitigation, that death is the appropriate sentence, the court  
26 shall sentence the defendant to death. If the court does not

1 concur with the jury determination that death is the  
2 appropriate sentence, the court shall set forth reasons in  
3 writing including what facts or circumstances the court relied  
4 upon, along with any relevant documents, that compelled the  
5 court to non-concur with the sentence. This document and any  
6 attachments shall be part of the record for appellate review.  
7 The court shall be bound by the jury's sentencing  
8 determination.

9 If after weighing the factors in aggravation and  
10 mitigation, one or more jurors determines that death is not the  
11 appropriate sentence, the court shall sentence the defendant to  
12 a term of imprisonment under Chapter V of the Unified Code of  
13 Corrections.

14 (h) Procedure - No Jury.

15 In a proceeding before the court alone, if the court finds  
16 that none of the factors found in subsection (b) exists, the  
17 court shall sentence the defendant to a term of imprisonment  
18 under Chapter V of the Unified Code of Corrections.

19 If the Court determines that one or more of the factors set  
20 forth in subsection (b) exists, the Court shall consider any  
21 aggravating and mitigating factors as indicated in subsection  
22 (c). If the Court determines, after weighing the factors in  
23 aggravation and mitigation, that death is the appropriate  
24 sentence, the Court shall sentence the defendant to death.

25 If the court finds that death is not the appropriate  
26 sentence, the court shall sentence the defendant to a term of

1 imprisonment under Chapter V of the Unified Code of  
2 Corrections.

3 (h-5) Decertification as a capital case.

4 In a case in which the defendant has been found guilty of  
5 first degree murder by a judge or jury, or a case on remand for  
6 resentencing, and the State seeks the death penalty as an  
7 appropriate sentence, on the court's own motion or the written  
8 motion of the defendant, the court may decertify the case as a  
9 death penalty case if the court finds that the only evidence  
10 supporting the defendant's conviction is the uncorroborated  
11 testimony of an informant witness, as defined in Section 115-21  
12 of the Code of Criminal Procedure of 1963, concerning the  
13 confession or admission of the defendant or that the sole  
14 evidence against the defendant is a single eyewitness or single  
15 accomplice without any other corroborating evidence. If the  
16 court decertifies the case as a capital case under either of  
17 the grounds set forth above, the court shall issue a written  
18 finding. The State may pursue its right to appeal the  
19 decertification pursuant to Supreme Court Rule 604(a)(1). If  
20 the court does not decertify the case as a capital case, the  
21 matter shall proceed to the eligibility phase of the sentencing  
22 hearing.

23 (i) Appellate Procedure.

24 The conviction and sentence of death shall be subject to  
25 automatic review by the Supreme Court. Such review shall be in  
26 accordance with rules promulgated by the Supreme Court. The

1 Illinois Supreme Court may overturn the death sentence, and  
2 order the imposition of imprisonment under Chapter V of the  
3 Unified Code of Corrections if the court finds that the death  
4 sentence is fundamentally unjust as applied to the particular  
5 case. If the Illinois Supreme Court finds that the death  
6 sentence is fundamentally unjust as applied to the particular  
7 case, independent of any procedural grounds for relief, the  
8 Illinois Supreme Court shall issue a written opinion explaining  
9 this finding.

10 (j) Disposition of reversed death sentence.

11 In the event that the death penalty in this Act is held to  
12 be unconstitutional by the Supreme Court of the United States  
13 or of the State of Illinois, any person convicted of first  
14 degree murder shall be sentenced by the court to a term of  
15 imprisonment under Chapter V of the Unified Code of  
16 Corrections.

17 In the event that any death sentence pursuant to the  
18 sentencing provisions of this Section is declared  
19 unconstitutional by the Supreme Court of the United States or  
20 of the State of Illinois, the court having jurisdiction over a  
21 person previously sentenced to death shall cause the defendant  
22 to be brought before the court, and the court shall sentence  
23 the defendant to a term of imprisonment under Chapter V of the  
24 Unified Code of Corrections.

25 (k) Guidelines for seeking the death penalty.

26 The Attorney General and State's Attorneys Association

1 shall consult on voluntary guidelines for procedures governing  
2 whether or not to seek the death penalty. The guidelines do not  
3 have the force of law and are only advisory in nature.

4 (Source: P.A. 96-710, eff. 1-1-10; 96-1475, eff. 1-1-11.)

5 (725 ILCS 5/119-1 rep.)

6 Section 15. If and only if the provisions of Senate Bill  
7 3539 of the 96th General Assembly become law, the Code of  
8 Criminal Procedure of 1963 is amended by repealing Section  
9 119-1 as added by Senate Bill 3539 of the 96th General  
10 Assembly.